



Public Employees for Environmental Responsibility

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September 16, 2016

FOIA Officer
US EPA Region 2
290 Broadway
New York, New York 10007-1866

RE: FREEDOM OF INFORMATION ACT (FOIA) REQUEST VIA U.S. MAIL & FOIA-ONLINE

Dear FOIA Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended, Public Employees for Environmental Responsibility (PEER) requests records concerning compliance with the Clean Water Act by the GMD Shipyard in Brooklyn, largest dry dock facility in New York City. Specifically, we request the following:

1. A copy of the 2014 inspection or assessment report of this facility by U.S. Environmental Protection Agency (EPA) Region 2 staff; and
2. Any communications about the nature of, or lack of, this facility's National Pollutant Discharge Elimination System (NPDES) permit during the period of January 1, 2013 to present.

In a January 21, 2009 memo, President Barack Obama declared the following policy for the Executive Branch:

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.

For any documents or portions of documents that you block release due to specific exemption(s) from the requirements of the Freedom of Information Act, please provide an index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of Vaughn v. Rosen (484 F.2d 820 [D.C. Cir. 1973] cert. denied, 415 U.S. 977 [1974]), provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the document or portion of a document withheld.

To the extent that EPA needs to perform a detailed review, PEER requests that all fees be waived because “disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor” (5 U.S.C. 552(a)(4)(A)):

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government.

The FOIA request is, by its terms, limited to identifiable activities of EPA and its employees.

2. For the disclosure to be “likely to contribute” to the understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.

The requested material consists of records documenting Clean Water Act implementation by EPA concerning a facility whose discharges could dramatically affect the water quality of New York Harbor. The records would indicate the rigor EPA exercised with regard to this key environmental safeguard.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requestor or a narrow segment of interested persons.

The requested information concerns the compliance with the Clean Water Act by the largest dry dock on the third largest container port in the nation. Such facilities are capable of discharging tons of grit, large amounts of heavy metals and volumes of hazardous materials.

A significant portion of the population is concerned about the ecological health of the New York–New Jersey Harbor Estuary which supports a great variety of thriving estuarine aquatic species. Tidal flow from this water body occurs as far north as Troy and the salt front (dilute salt water) can reach as far as Poughkeepsie.

The general public has a keen interest in any factor bearing on the enforcement of the Clean Water Act. In addition, as the underlying subject matter of this request concerns the possible existence of long-standing violations, the public has an acute interest in learning about the quality of EPA oversight of delegated pollution control programs of its state and local partners.

PEER intends to provide the requested information to the general public through —

- Release to the news media;
- Posting on our web page which draws between 1,000 and 10,000 viewers per day; and
- Publication in PEER’s newsletter that has a circulation of approximately 20,000, including 1,500 environmental journalists.

Through these techniques, PEER has a long track record of generating media and public attention concerning the operations of federal agencies, including EPA.

4. The disclosure must contribute “significantly” to public understanding of government operations or activities.

The nature of the information should shed some direct light on the manner and degree to which EPA has exercised its authority under the enforcement provisions of the Clean Water Act. If, as we strongly suspect, the records show that EPA has long been aware of but has not acted on significant Clean Water Act violations, the public will gain deep insight into the nature of Region 2 operations.

In addition, we believe these records will enlighten the public on how well the ecology of the New York–New Jersey Harbor Estuary is protected from industrial pollution.

5. The extent to which disclosure will serve the requestor’s commercial interest.

Disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation’s resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code.

6. The extent to which the identified public interest in the disclosure outweighs the requestor’s commercial interest.

As stated above, disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation’s resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501(c)(3) of the Internal Revenue code.

If you have any questions about this FOIA request, please contact me at (202) 265-PEER. I look forward to receiving the agency’s final response within 20 working days.

Cordially,

Jeff Ruch
Executive Director